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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re GRACE G.,
a Person Coming Under the Juvenile Court Law.

B214734
(Los Angeles County
Super. Ct. No. CK16932)

MERCY L.,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY DEPARTMENT OF
CHILDREN AND FAMILY SERVICES, et al.,

Real Parties in Interest.

ORIGINAL proceeding for extraordinary writ. Randolph Hammock, Referee.
Writ granted.

Law Offices of Alex Iglesias, Minyong Lee and Steven D. Shenfeld for Petitioner.

Office of the Los Angeles County Counsel, James M. Owens, Assistant County Counsel, and Timothy M. O’Crowley, Senior Deputy County Counsel, for Real Parties in Interest.

Children’s Law Center of Los Angeles - CLC 1, Sophia Ali, and Sonali Jandial, for Minor.

In this extraordinary writ proceeding, Mercy L. (mother) challenges the juvenile court's finding at a hearing under Welfare and Institutions Code¹ section 366.22, subdivision (a), that returning her daughter Grace G. to her custody would present a substantial risk of detriment to the child. We hold there was insufficient evidence to support the court's finding and therefore we grant mother's writ petition. We direct the juvenile court to vacate its March 13, 2009 order terminating family reunification services and setting a permanent planning hearing under section 366.26, and to enter a new order returning Grace to mother's physical custody in accordance with section 366.22.

BACKGROUND

A. The Initial Referral

On August 27, 2007, a Los Angeles police officer responded to a child abuse investigation radio call at mother's residence. Mother told the officer that she believed that a man at her three-year-old daughter's babysitter's house inappropriately touched her daughter's vaginal area. She indicated that the incident took place the previous month.

The officer transported mother and Grace to the police station to talk to a female detective. The detective attempted to interview Grace, but Grace would not speak to her. The detective and the officer then interviewed mother, who told them that she had been so upset about the possible abuse that she did not know what to do. She finally called the police after her doctor told her to report the abuse. She also made an appointment for Grace to be examined by the rape center at a hospital.

¹ Further statutory references are to the Welfare and Institutions Code.

Because mother had waited almost two months to report the possible sexual abuse, the police officer made a referral to the Los Angeles Department of Children and Family Services (the Department). A social worker from the Department interviewed mother at the police station. During that interview, mother told the social worker that she did not trust anyone, and expressed concern that the Department was going to take Grace from her.² She also revealed that she had lost custody of her two other children, Candice³ L. and Matthew L., due to physical abuse by her. During the course of the interview, mother became quite emotional and accused the social worker of “putting [her] down.” Concerned for Grace’s safety, the Department took her into protective custody.

B. The Petition and the Prior Dependency Case

The Department filed a petition under section 300 based on allegations regarding Grace’s father’s alleged rape of mother in February 2005, prior domestic violence between mother and a previous male companion, and Grace’s father’s failure to provide for Grace. The Department subsequently dismissed that petition and filed an amended petition alleging counts based upon mother’s mental and emotional problems, Grace’s father’s failure to provide for Grace, and the prior dependency case involving Candice and Matthew.

In a jurisdiction/disposition report filed concurrently with the first amended petition, the Department provided details regarding the previous dependency case involving Candice and Matthew. The children were declared dependents of the

² Mother said she did not know the whereabouts of Grace’s father. She said that father left in 2004, although he returned in February 2005 and raped her. Because he is not a party to this petition, we limit our discussion of the facts to those relevant to mother.

³ Candice’s name is sometimes spelled as “Candace” in various parts of the record.

juvenile court in July 1995 based on sustained allegations that mother physically abused Candice by hitting her with a foreign object, inflicting serious injury to her leg, and then failed to obtain medical treatment for her. Family reunification services regarding Candice were terminated in September 1997, and mother's parental rights as to Candice were terminated in December 2004. Matthew, however, was returned to mother's custody in April 1998. A few months later, Matthew went to live with a maternal aunt.⁴

The Department later amended the petition regarding Grace to add a count based upon allegations that Grace was exposed to a violent confrontation in which mother held a knife to the father and threatened to kill him. The juvenile court sustained only two of the counts alleged in the second amended petition: count b-1, which alleged that mother demonstrated mental and emotional problems in April and August 2007 and was diagnosed with "Anxiety disorder NOS, PTSD and depression," and count b-2, which alleged that Grace's father is unable to care for and has failed to provide for Grace. The court dismissed the remaining counts, and ordered mother to attend parent education and individual counseling to address her emotional problems, underlying issues, and her history of physical abuse of Grace's siblings.

C. Mother's Compliance With Case Plan and Visitation

Mother began attending parenting classes and started individual therapy a month after the initial petition was filed on August 30, 2007, which was more than five months before the amended petition was adjudicated.⁵ In addition to seeing a

⁴ Apparently, a referral was made to the Department regarding Matthew on September 2, 1998, but the referral was closed because mother had given consent for a maternal aunt to care for Matthew.

⁵ Mother completed the parenting classes on February 8, 2008.

licensed therapist, Raquel Pizano-Hazama (whom she had seen for a few sessions for job-related stress in April 2007, before this dependency case was initiated), mother also was being treated by a psychiatrist, Dr. Nikhil Gera, who had been treating mother since July 2007.

In late September 2007, Dr. Gera was provided with reports and psychological evaluations from the previous dependency case. In a report he provided to the Department in October 2007, Dr. Gera stated that he disagreed with previous evaluations that indicated mother was psychotic and delusional. He stated that her current diagnosis was Post-Traumatic Stress Disorder (PTSD), which he believed was due to extensive physical and sexual trauma mother experienced both as a child and as an adult. He did not see any dangerous psychiatric symptoms, and believed that mother's paranoia stemmed from her overwhelming anxiety based on her previous experience with the Department. He noted that he was treating mother with Zoloft, and stated that she was fully compliant with her medication.

In October 2007, the juvenile court ordered the Department to interview mother's psychiatrist and therapist and submit a report as to any concerns they might have about mother's ability to care for Grace. Dr. Gera reported that mother had been a patient at the clinic in which he works for two years. He noted that at times mother experienced periods of increased stress and anxiety symptoms, during which she tended to have fearful feelings that bordered on paranoid. He believed that her fears and paranoia came from her traumatic experiences. He disagreed with the assessment that was done in connection with the previous dependency case. In that previous assessment, the psychologist, Dr. Laura Geiger, diagnosed mother as having borderline intellectual functioning and schizoid

personality disorder, and identified mother's "chief difficulties" as "problems with impulse control and repressed feelings of hostility, and a tendency towards angry explosiveness." Dr. Gera stated that neither he nor mother's previous treating psychiatrist noted those symptoms or diagnosis, and suggested that mother may have displayed those traits when she was previously assessed due to the close proximity of the assessment and mother's traumatic experiences.

Pizano-Hazama reported in November 2007 that she would diagnose mother as having an adjustment disorder with mixed depression and anxiety. She believed that mother's paranoia was a personality characteristic rather than psychosis. Neither Pizano-Hazama nor Gera obtained much information from mother about her other children or the previous dependency case. Mother told both of them that she lost her children because people said bad things about her, although she admitted to Gera that she hit Candice and knew it was wrong.

Over the next 16 to 17 months, mother continued to meet biweekly with her therapist. She also met monthly with her psychiatrist for medication management.⁶ Pizano-Hazama reported that the initial focus of mother's therapy was mother's sadness, anger, helplessness, and anxiety over losing custody of Grace, and helping mother to cope and adjust to her separation from Grace. By August 2008, mother's therapy also addressed the "[c]ircumstances around the loss of custody of [mother's] two oldest children." In October 2008, Pizano-Hazama reported that mother continued to address those issues, as well as issues regarding her family of origin. By December 2008, mother's therapy focused on mother's behavior and the choices she made when she physically abused Candice in 1995, along with

⁶ Mother changed psychiatrists in September or October 2008, from Dr. Gera to Dr. Bailey. Apparently, neither Dr. Gera nor Dr. Bailey provided many progress reports. In the few they did provide, however, they stated that mother was compliant with her medication regimen and appointment schedule.

mother's "underlying fears at that time."⁷ Pizano-Hazama discussed with mother alternate safer decisions and choices mother could make, as a pro-active approach to child abuse prevention.

Throughout the months Pizano-Hazama was treating mother, she continuously assessed and observed mother for psychotic symptoms and suicidal/homicidal ideations or plans, and she did not identify any symptoms that might interfere with mother's ability to care for Grace. Over the course of her case, mother progressed from having monitored visits with Grace to having unmonitored weekend overnight visits beginning in July 2008. Although the Department noted some concerns about the visits and mother's hostile and/or belligerent attitude during the first few months, by April 2008 the Department reported that mother's conduct had improved and that there were no problems during her visits with Grace. In fact, in its April 30, 2008 status review report, the Department reported that it had conducted an assessment and determined that the risk level if Grace were returned to mother's custody was moderate. In October 2008, however, the Department reported that mother had not made any contact with the Department during that month (although she continued to pick up Grace for her overnight visits and return her on time), and therefore the Department expressed concern about returning Grace to mother's custody. In a report filed in January 2009, the Department noted some peculiar behavior by mother -- she laughed and cried during a telephone conversation with the social worker, and gave incoherent explanations for missing some appointments with her psychiatrist -- and

⁷ The social worker asked Pizano-Hazama to clarify what she meant by "underlying fears." Pizano-Hazama explained that mother said the reason for her abuse of Candice was because mother was afraid that Candice's crying would wake mother's sister, with whom they were staying, and that they would lose their home because of it. The social worker concluded from this explanation that "mother still does not take responsibility for the physical abuse of Candice."

recommended that she be given another six months of family reunification services. Three months later, in March 2009, the Department reported that mother had not maintained contact with the Department. (It is unclear the period during which she failed to maintain contact, since the report discusses certain telephone conversations mother had with the social worker.) The Department recommended that family reunification services be terminated.

D. Twelve- and Eighteen-Month Hearings

The juvenile court originally scheduled the twelve-month review hearing under section 366.21, subdivision (f), for October 30, 2008. The hearing was then set for a contested hearing on December 3, 2008. The attorney for the Department was ill that day, so the contested hearing was rescheduled to January 16, 2009. For reasons that do not appear in the record, the hearing was continued yet again to March 2, 2009 -- which was 18 months after Grace was detained. The court ordered the Department to file an 18-month review report under section 366.22 before that date, and ordered Pizano-Hazama to be available by telephone at the continued hearing.

Pizano-Hazama appeared (telephonically) at the hearing on March 2, 2009. She testified that she has a bachelor's degree and a master's degree in clinical social work, and has been practicing as a licensed therapist for 17 years, working with children and families. She stated that her initial focus in therapy with mother was on the reasons for Grace's removal, and assessing whether mother had any psychotic behavior that would interfere with mother's ability to care for Grace. She had not been aware when she first started working with mother that mother had lost custody of her other children, although mother eventually began to discuss that with her, and the Department provided additional information. When asked what mother said had caused her to physically abuse Candice, Pizano-Hazama

testified that mother indicated that she was very frustrated and feeling a lot of pressure from her sister to keep Candice quiet so her sister could sleep.

Pizano-Hazama testified that she believed the issues regarding mother's abuse of her older children were adequately addressed in therapy. She said that mother had made a lot of progress during the time she was treating her. She noted that mother had a stable full-time job, had become more independent from her family, had become financially independent, and had complied with her medication. She also noted that there had been a significant decrease in mother's anger. She testified that she did not believe that mother currently posed a risk to Grace, and she did not have any concerns about returning Grace to mother.

After Pizano-Hazama completed her testimony, the court noted that the hearing could not be completed that day, and continued the matter to March 12, 2009. The court also noted that it had taken so long to hear the contested 12-month review that it was time for the 18-month review. Therefore, the court stated that it was going to consider the hearing to be a contested 18-month review under section 366.22.

At the start of the hearing on March 12, the juvenile court received into evidence all of the reports that had been filed in the case, took judicial notice of various matters from the earlier dependency case, and heard closing arguments.

The Department argued that Grace would be at risk if she were returned to mother because mother did not make sufficient progress in her therapy. As support for its assertion, the Department noted that Pizano-Hazama did not address with mother the allegation that mother had threatened Grace's father with a knife in February 2007, or that, during the previous dependency case in the 1990's, mother had left "homicidal" messages for the foster mother. The Department also criticized the focus of mother's therapy, saying "The focus was not on accepting responsibility for the allegations in this petition as well as in what caused her to

lose her other children. It wasn't about her connecting dots and being able to have an 'aha' moment, 'this is why I did it,' and then actually talking about what to do differently in the future. None of this. It was all about her being a victim of the system." In essence, the Department asked the court to give little weight to Pizano-Hazama's opinions, and to find that mother had not made substantive progress in her court-ordered treatment program, which would be prima facie evidence under section 366.22, subdivision (a), that return of Grace would be detrimental.

Minor's counsel argued that Grace should be returned to mother. Her conclusion that there was no substantial risk to Grace was based upon Pizano-Hazama's testimony, which counsel noted was the only testimony presented. In response to the court's suggestion that it could reject Pizano-Hazama's testimony if it deemed it unreliable, counsel pointed out that Pizano-Hazama was a professional with 17 years of experience, who knew how to conduct therapy, while the court and the attorneys were not professional therapists.

Mother's counsel agreed with minor's counsel. She argued that mother and Pizano-Hazama properly focused on the issues that brought Grace into the dependency system, and that mother had made substantial progress. Like minor's counsel, she contended that the Department and the court should leave it to experienced therapists to determine how to conduct therapy to address the issues that needed to be addressed.

After closing arguments, the court took the matter under submission and continued it to the next day. The next day, the court reopened the matter on its own motion and called mother to testify, saying there were some questions it needed to ask to clarify whether there is a substantial risk of danger if Grace is returned.

The court began by asking mother what happened with regard to Candice in 1995. Mother said that Candice, who was seven years old at the time, was crying a lot, and mother's sister told mother to keep Candice quiet. When Candice would not stop crying, mother "accidentally" threw something at her and broke her leg. Mother did not take Candice to the hospital, however, because her sisters told her she would be arrested because the doctor would report it. The court asked mother what made her throw something at Candice. When mother began to repeat the story she had just told, the court interrupted, saying: "No. You explained all that to me. I understand that, but what was it -- what have you learned in 14 years as to what caused you to do that?" Mother responded that she was under stress.

The court then asked about a psychologist's report from the previous case, in which the psychologist stated that mother's chief difficulties with regard to caring for Candice were her problems with impulse control and repressed feelings of hostility, and a tendency toward angry explosiveness. Mother testified that she discussed those issues with Pizano-Hazama, and the court asked what she learned. Mother responded that she learned how to control her anger, by thinking about what she is doing, taking deep breaths, taking walks in the park, and calling friends from church. She said that she did not believe she currently has problems with anger management or impulse control; although she admitted that she sometimes gets angry, she is able to control it.

Returning to the circumstances regarding the abuse of Candice, the court asked how Candice got scratches on her back. Mother said she did not recall scratches on Candice's back, noting that the incident took place many years ago. She also did not recall making statements attributed to her that she lost Candice to adoption because the judge and the attorney in the prior case hated her. She did recall concerns she had that she was being prevented from visiting with Candice when she was in foster care. When asked by the court why she lost Candice to

adoption, mother responded that she started losing hope at one point. She admitted that she was not a fit mother at that time.

The court also questioned mother about the incident in February 2007 in which mother allegedly assaulted Grace's father with a knife, and about her relationship with a man who sometimes accompanied mother when she picked up Grace for her visits. With regard to the February 2007 incident, mother explained that she had an argument with the father because he would not help her care for Grace, but she denied threatening him with a knife or threatening to kill him.⁸ With regard to the man who sometimes accompanied her, she provided his name, and said he was a co-worker and a good friend. Although she had had a romantic relationship with him at one time, she ended it in order to focus on the dependency case, but they have continued their friendship.

Finally, the court asked mother why she believed the court took Grace away from her. She said that when Grace indicated that she had been fondled while with the babysitter, mother panicked because she thought Grace would be taken away, and she failed to take Grace to the doctor. She said that another reason for Grace's detention was because mother was crying when she went to the police station. When asked if she believed it had anything to do with her "mental health issues," mother agreed that she had mental health issues at that time, but said that they have been resolved. She testified that she takes Zoloft for anxiety, and that she believes the medication has helped her.⁹

⁸ The court initially stated that it had found the allegation that mother had threatened the father with a knife to be true, and counsel for the Department agreed. After a discussion off the record, the court corrected itself and said the allegation had been dismissed.

⁹ She also testified that she was not taking any medication at the time of the incident with Candice, or when Matthew was returned to her.

Under questioning by minor's counsel, mother testified that she learned from therapy with Pizano-Hazama how to control her anger and has developed a support system. She testified that she has better communication with Grace, and that by talking with Grace, she can try to understand why she might be cranky. She also said that she takes responsibility for and regrets her past actions with Candice and Matthew, that she plans to continue with her therapy and medication, and that she would take Grace to the doctor or hospital right away if she needed medical attention.

After further closing arguments, the juvenile court issued its ruling. It began by stating that the Department had not demonstrated that mother failed to participate and make substantive progress in her court-ordered programs; rather, the court found that mother had participated and made substantive progress in her programs. Nevertheless, the court found that returning Grace to mother's custody would create a substantial risk of detriment to Grace's safety, protection, or physical or emotional well-being. The court acknowledged that Pizano-Hazama's testimony was uncontroverted, but it gave very little weight to the therapist's opinions. The court explained that it called mother as a witness because it wanted to determine whether mother has "made the type of realizations" necessary for it to find there is no substantial risk of danger. It expressed concern that, in the previous dependency case, mother apparently completed her case plan with regard to Matthew and Matthew was returned to her, but she still had problems that resulted in a referral. The court concluded that mother was "minimalizing what happened with Candace [*sic*] and Matthew" and the events that brought Grace into the dependency system, and therefore mother has not made sufficient progress for the court to find there is no substantial risk of danger if Grace is returned. Therefore, the court terminated family reunification services and set a hearing under section 366.26 to select a permanent plan for Grace.

DISCUSSION

In her petition for extraordinary relief from the juvenile court's March 13, 2009 order, mother contends there was insufficient evidence to support the court's finding that returning Grace to mother's custody would present a substantial risk of detriment to Grace. Mother also contends that the court violated her right to a fair hearing by an impartial arbiter by calling mother as its own witness and assuming the role of an advocate. We agree there is insufficient evidence to support the juvenile court's finding.¹⁰

A. *Standard of Review*

Under California's dependency scheme, there is a statutory presumption prior to the permanency planning stage that a child under the jurisdiction of the juvenile court will be returned to parental custody. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 308.) Thus, at the 18-month review hearing, the juvenile court *must* return the child to the parent's custody "unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (§ 366.22, subd. (a).) The social worker has the burden of establishing that detriment. (*Ibid.*)

"The standard for showing detriment is 'a fairly high one. It cannot mean merely that the parent in question is less than ideal, did not benefit from the reunification services as much as we might have hoped, or seems less capable than an available foster parent or other family member.' [Citation.] Rather, the risk of detriment must be *substantial*, such that returning a child to parental custody

¹⁰ We note that minor's counsel has filed a statement in support of mother's petition.

represents some danger to the child's physical or emotional well-being.

[Citations.]” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1400; see also *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 769; *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1751.)

We review a juvenile court's finding of a substantial risk of detriment to determine whether substantial evidence supports that finding. (*In re Yvonne W.*, *supra*, 165 Cal.App.4th at pp. 1400-1401.) “[W]e consider the evidence favorably to the prevailing party and resolve all conflicts in support of the [juvenile] court's order. [Citation.] ‘Substantial evidence’ means evidence that is reasonable, credible and of solid value; it must actually be substantial proof of the essentials that the law requires in a particular case.” (*Id.* at p. 1401.) “[W]hile substantial evidence may consist of inferences, such inferences must be “a product of logic and reason” and “must rest on the evidence” [citation]; *inferences that are the result of mere speculation or conjecture cannot support a finding* [citations].” [Citation.]” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393-1394.) In the absence of substantial evidence showing a substantial risk of detriment, we must reverse the juvenile court's order terminating family reunification services and setting a permanency planning hearing.

B. The Evidence Presented Does Not Support the Risk of Detriment Finding

As noted above, the juvenile court found there was a substantial risk of detriment based upon its conclusion that mother was minimizing her prior history with Candice and Matthew as well as the events that led to Grace's detention. There is some evidence to support the court's conclusion that mother minimized the events that led to the prior dependency case. For example, although mother admitted that she threw an object at Candice and broke her leg, she said she threw it “accidentally.” She also said she had not hit Candice with any type of object

before that incident, although there was evidence from the prior dependency case that mother had hit or kicked Candice before then. She did not remember that Candice had scratches on her back when she was detained, and could not explain how they got there. She also did not remember saying that she lost Candice because the judge and attorney hated her; when asked why she lost Candice to adoption, she testified that it was because she gave up. She did, however, admit that she was not a fit mother during the prior dependency case, and she accepted responsibility for her actions, saying that they have haunted her for many years.

With regard to the events that led to the current case, there is less evidence to support the juvenile court's conclusion. When asked why Grace was taken from her, mother testified it was because she failed to promptly report possible sexual abuse of Grace and because she cried when she did report it. After prompting by the court, she admitted that she had "mental health issues" at that time, but she said that those issues were now resolved.

But even if this evidence is sufficient to support the juvenile court's conclusion that mother minimized the events that led to the prior and current dependency cases, there still must be substantial evidence to support the court's inference that, because she minimized those events, mother presents a risk to Grace. There is no such evidence.

Mother testified that, through therapy, she learned how to control her anger, developed a support system to help her when she needed it, and learned how to better communicate with Grace to understand why she might be cranky. She also testified that she takes medication to control her anxiety (which she was not taking during the prior dependency case), and she intended to continue taking her medication. There were no reports of any incidents of violence or displays of anger by mother in more than a year, and mother had been having unmonitored

overnight visits with Grace for more than seven months without any problems reported.

The Department presented no evidence that mother currently poses a threat to Grace, but instead sought to discredit Pizano-Hazama, mother's therapist, who testified that the issues regarding mother's abuse of her older children were adequately addressed in therapy, that mother had made substantial progress in her treatment, and that she did not believe that mother posed a risk to Grace. While the Department was successful in convincing the juvenile court to give little weight Pizano-Hazama's opinions, it failed to provide any evidence that her opinions were incorrect. It offered no testimony or opinion from any other qualified professional that Pizano-Hazama's methods of therapy were inadequate to treat mother, or that mother did not adequately progress in therapy.¹¹

As the California Supreme Court noted, "[w]ithout the testimony of psychologists, in many juvenile dependency and child custody cases superior courts and juvenile courts would have little or no evidence, and would be reduced to arbitrary decisions based upon the emotional response of the court." (*In re Jasmon O.* (1994) 8 Cal.4th 398, 430; see also *Blanca P. v. Superior Court, supra*, 45 Cal.App.4th at pp. 1749-1751.) Here, there was no evidence presented that the way in which mother may have "minimized" the events that led to the previous and current dependency cases necessarily poses a substantial risk that mother would cause harm to Grace if she were returned to mother's custody. In fact, the only evidence presented on that issue -- Pizano-Hazama's testimony, to which the

¹¹ To the extent the Department or the juvenile court relied upon the psychological assessment of mother that was performed in the prior case 12 years ago, that outdated assessment is not the type of evidence that could be deemed credible and of solid value, from which a court could conclude that there *currently* is a risk of detriment to Grace. (*In re Heather P.* (1988) 203 Cal.App.3d 1214, 1229-1230, disapproved on other grounds in *In re Richard S.* (1991) 54 Cal.3d 857, 866, fn. 5.)

juvenile court gave little weight -- indicated that returning Grace to mother's custody would *not* pose such a risk. Therefore, the court's order terminating family reunification services and setting a permanency planning hearing must be vacated.

DISPOSITION

The petition for extraordinary writ is granted. Let a peremptory writ of mandate issue directing the juvenile court to vacate its March 13, 2009 order terminating family reunification services and setting a permanent planning hearing under section 366.26, and to enter a new order returning Grace to mother's physical custody in accordance with section 366.22.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.